IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 110 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NAVJEEVAN OIL MILLS

Versus

SALES TAX OFFICER

Appearance:
MR KA PUJ for Petitioner
MR UR BHATT, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 27/02/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

Rule. Mr UR Bhatt, learned AGP waives service of

notice of Rule on behalf of the respondents. Having regard to the facts of the case, the petition is taken up for final disposal today.

2. By means of filing this petition under Article 226 of the Constitution, the petitioner has prayed to issue a writ of certiorari or any other appropriate writ, order or direction to quash and set aside the order dated December 14, 2000 passed by the Assistant Commissioner of Sales Tax (Appeals) VII, Bhavnagar confirming the assessment made by the Sales Tax Officer.

3. The main ground of challenge to the impugned order is that the appeal was heard by Shri Sagar, the then Assistant Commissioner of Sales Tax (Appeals) who, after hearing the matter, had sent the file for pre-audit to the Deputy Commissioner of Sales Tax, Bhavnagar but after retirement of Shri Sagar from service, notes prepared by Mr Sagar were taken into consideration by Shri Chandubhai K Patel, i.e. the present Assistant Commissioner of Sales Tax (Appeals) VII, Bhavnagar who decided the appeal without affording any opportunity of being heard to the petitioner.

4. On notice being issued, Shri CK Patel, Assistant Commissioner of Sales Tax (Appeals) VII, Bhavnagar has filed reply affidavit. In paragraph 2 of the said reply it is stated that the file, after hearing, was sent to the higher authority for pre-audit, but in the meantime his predecessor in office had retired and, therefore, after the file was received back, he had gone through the notes made on the file and decided the appeal. Shri Patel has further stated in his reply that alternative remedy of filing an appeal before the Appellate Tribunal is available to the petitioner and, therefore, the petition should not be entertained.

5. We have heard the learned counsel for the parties and taken into consideration the documents forming part of the petition. It is true that the impugned order can be challenged by the petitioner before the Appellate Tribunal, but in our opinion, by passing the impugned order, the respondent No. 2 has violated the principles of natural justice and as the impugned order is void, we do not feel it expedient to direct the petitioner to resort to alternative remedy. From the facts which have been stated above, it is evident that the appeal was heard by Shri Sagar who was then discharging duties as Assistant Commissioner of Sales Tax (Appeals) VII, Bhavnagar whereas the appeal has been decided by Shri Chandubhai K Patel, who is successor in office of Shri

Sagar without affording opportunity of being heard to the petitioner. In Gullapalli Nageswara Rao & Ors. vs. Andhra Pradesh State Road Transport Corporation and Anr., AIR 1959 SC 308, under the relevant Act and the Rules, the Minister was empowered to hear the parties and pass the final order but he delegated his function of hearing to his Secretary, who heard the parties and put up a note before the Minister for final decision and the order was passed by the Minister. Quashing the orders passed by the Minister, the Supreme Court has observed as under::-

> "31. The second objection is that while the Act and the Rules framed thereunder impose a duty on the State Government to give a personal hearing, the procedure prescribed by the Rules impose a duty on the Secretary to hear and the Chief Minister to decide. This divided responsibility is destructive of the concept of judicial hearing. Such a procedure defeats the object of personal hearing. Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear-up his doubts during the course of the arguments, and the party appearing to persuade the authority by reasoned arguments to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. We therefore hold that the said procedure followed in this case also offends another basic principle of judicial procedure."

From the principle enunciated by the Supreme Court in the above quoted decision, it is manifest that there cannot be divided loyalty in observing the principles of natural justice. If one person hears and another decides, then personal hearing becomes an empty formality and such procedure followed offends basic principle of judicial procedure. It is not permissible that even though hearing is given by one authority, a decision may be rendered by other authority. As a general rule `he who hears should decide'. We may observe that the decision in Gullapalli's case has been considered by the Supreme Court in Ossein & Gelatine Manufacturers' Association of India vs. Modi Alkalies & Chemicals Ltd. & anr., AIR 1990 SC 1744 where the view taken is that the principle that `one who hears must decide' is not a rule of universal application and if another officer on the basis of records passes an order, it will not violate the principles of natural justice if it is not a formal judicial proceeding. Similar view is taken in General Manager, Eastern Railway & Anr vs.

Jawala Prosad Singh, AIR 1970 SC 1095. However, in the present case we find that the appeal is required to be heard by a designated officer and the officer hearing the appeal is exercising quasi-judicial powers. Therefore, in our view, the principle laid down in Gullapalli's case would be applicable to the facts of the present case.

6. Having regard to the facts and circumstances of the case, we are of the opinion that principles of natural justice were violated when the appeal filed by the petitioner came to be decided by Shri Chandubhai K Patel, Assistant Commissioner of Sales Tax (Appeals) VII, Bhavnagar on the basis of notes prepared by Shri Sagar when the appeal, in fact, was heard by Shri Sagar, who was then constituted the appellate authority. The appellate order is, therefore, liable to be set aside.

7. For the foregoing reasons, the order dated December 14, 2001 passed by the respondent No. 2 which is produced at Annexure "F" to the petition is quashed and set aside. It is clarified that we have not gone into the merits of the case at all and, therefore, the respondent No. 2 shall decide the appeal on merits and in accordance with law after affording opportunity of being heard to the petitioner as expeditiously as possible and preferably within two months from today.

Rule is made absolute accordingly with no order as to costs.

(J.M. Panchal, J.)

(M.S. Shah, J.)

sundar/-